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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Calling Party Pays Service Option in the Commercial Mobile Radio Service	)	WT Docket No. 97-207

COMMENTS OF AMERICAN PUBLIC COMMUNICATIONS COUNCIL

The American Public Communications Council ("APCC") submits the following comments in response to the Commission's March 9, 1998 Public Notice seeking comment on the Petition for Expedited Consideration ("Petition") filed by the Cellular Telecommunications Industry Association ("CTIA") in the above-captioned proceeding.

STATEMENT OF INTEREST

APCC is a national trade association of some 2,000 independent (i.e. non-local exchange carrier) payphone service providers ("PSPs"). APCC's membership also includes equipment manufacturers, suppliers, and service providers serving the payphone industry. APCC is dedicated to ensuring a fair and competitive public payphone industry and to bringing the highest possible level of service to the public.

DISCUSSION

In its Petition, CTIA urges the Commission to issue a Notice of Proposed Rulemaking ("NPRM") to adopt Federal rules governing Calling Party Pays ("CPP") service offerings by Commercial Mobile Radio Services ("CMRS") providers on an expedited basis. APCC takes no position as to whether the issuance of an NPRM at this juncture is appropriate. If, however, the Commission decides to move forward in this proceeding, APCC urges the Commission to focus its attention on how CPP should be implemented for parties making CPP calls from payphones. In particular, the Commission should ensure (1) that there is a reliable method for determining whether a CPP call is placed from a payphone and that the cost of the call is not billed to the PSP; and (2) that PSPs are "fairly compensated" for CPP calls made from their payphones.

I. There Must Be A Reliable Method For Determining Whether A CPP Call Is Placed From A Payphone

As the Commission recognized in its earlier Notice of Inquiry, 12 FCC Rcd 17693 (1997) ("NOI"), in this proceeding, "[i]n order to be able to charge incoming calls to the calling party, the mobile carrier must have access to billing collection information (e.g. the caller's name and address) for the calling party." NOI at 17702. When a CPP call is made from a business or residence, that information is available, at least to the originating local exchange carrier ("LEC"). In that instance, the CPP call can be billed directly to the caller. When a CPP call is placed from a payphone, however, the only billing information is the information associated with the payphone line and the PSP is not the calling party. APCC is very concerned that the costs of CPP calls not be charged back to the originating payphone line, and thus, to the PSP.

PSPs, in most instances, have no ability to determine whether a given call from their payphones is a CPP call. The burden thus must fall on the CPP provider to identify and correctly handle CPP calls from payphones. It is APCC's understanding that where CPP is currently available, CPP providers are aware of the problem, are able to determine that a call is being made from a payphone and do not bill the cost of that call to the payphone line. Instead, the cost of the call is either charged by the wireless provider to its subscriber, or the CPP call is not allowed.[1]

It is not clear how CPP providers currently are making the determination that the CPP call is being made from a payphone. It is imperative that if a national framework for CPP is adopted, there be a uniform and reliable method of determining whether a CPP call is placed from a payphone.

This should not be difficult to accomplish. The Commission has already, in its proceeding implementing the payphone provision of the Telecommunications Act of 1996, required LECs to transmit with each call from a payphone, as part of the payphone's automatic number identification ("ANI"),[2] coding digits that identify the call as originating specifically from a payphone.[3] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 20541, 20591 (1996) ("Payphone Order"); Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order on Reconsideration, 11 FCC Rcd 21233, 2165-66 (1996). The coding digit requirement became effective for nearly all payphones on March 9, 1998. Implementation of the Pay Telephone Reclassification Provisions of the Telecommunications Act of 1996, Memorandum Opinion and Order, CC Docket 96-128,

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[1] If the PSP were charged for the CPP call, it would have no way of recovering the cost of the call from the end user placing the call and would be forced to absorb the loss.

[2] The ANI is the "bill to" number that is transmitted to the carrier on every toll call. In the case of payphones, the ANI is virtually always the originating line number.

[3] One of the purposes of this requirement is to provide a mechanism whereby interexchange carriers ("IXCs") can track calls from payphones in order to pay PSPs the per-call compensation mandated by the Commission in the payphone proceeding.

DA 98-481 (CCB March 9, 1998). The specific coding digits required vary depending on type of line used to connect the payphone. For the payphone-specific "coin lines" that are used to connect the "dumb"[4] payphones traditionally used by LEC PSPs, the coding digits are "27." For the "dumb" lines used to connect the "smart" payphones overwhelmingly used by independent PSPs, the coding digits are "70."

If a national framework for CPP is implemented, the Commission should require the LECs to transmit the payphone-specific coding digits to CMRS providers, just as they do for IXCs, if they are not already doing so. The Commission should further require CPP providers to screen the coding digits and determine whether the call is from a payphone.

Having determined that a CPP call is being made from a payphone, CPP providers should be able to use alternative billing methodologies to collect for the call, rather than billing the PSP. For example, the caller could be asked to provide a calling card or credit card or to provide a third number for billing. Alternatively, the CPP provider could opt not to allow the call as a CPP call.

II. PSP Must Be Fairly Compensated For Every CPP Call Made From Their Payphones

In addition to ensuring that CPP providers are able to recognize that a CPP call is being made from a payphone and handle the call accordingly, the Commission must also ensure that PSPs are fairly compensated for each and every CPP call made from their payphones. Section 276 of the Communications Act of 1934, which was added by the Telecommunications Act of 1996, requires the Commission "to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphones . . . ." 47 U.S.C. § 276(b)(1)(A).

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[4] The LECs have historically relied on their networks to provide the intelligence to operate their payphones. Thus, their payphones are "dumb" units, with little or no internal intelligence. By contrast, independent PSPs have traditionally relied on onboard microprocessor-driven "smart" payphones.

In the Payphone Order, in addressing its mandate to ensure fair compensation, the Commission concluded generally that where "the market does not or cannot function properly . . . the Commission needs to take affirmative steps to ensure fair compensation . . . ." Payphone Order at 20567. In the case of access code calls and subscriber 800 calls, the Commission determined that it was necessary to prescribe compensation because "the PSP either receives no revenue for originating these calls (i.e. for subscriber 800 and other toll-free number calls), or is unable to block callers from making such calls (access code calls)." Id. at 20568. The Commission should similarly require compensation for CPP calls.

In the case of access code and subscriber 800 calls, the Commission determined that the IXC should be required to pay the compensation on the theory that the IXC was the economic beneficiary. Payphone Order at 20584. That same principle should hold true for CPP. In that context, since the CMRS provider is the ultimate economic beneficiary, the CMRS provider should be required to pay the compensation to the PSP.

CONCLUSION

If the Commission moves forward with the implementation of a national framework for CPP, it must do so in such a way so that PSPs do not bear the cost of the CPP calls made from payphones and that PSPs are fairly compensated for the use of their payphones to place CPP calls.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 1998, a copy of the foregoing Comments of American Public Communications Council was delivered by hand to the following:

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